

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ASHA COOK,

Case No.

Plaintiff,

Judge:

Magistrate Judge:

v.

LOWES COMPANIES, INC.

Defendant.

NOTICE OF FILING NOTICE OF REMOVAL (FEDERAL COURT)

**NOTICE OF REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

NOTICE OF FILING NOTICE OF REMOVAL (CIRCUIT COURT)

APPEARANCE (FEDERAL COURT)

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ASHA COOK,

Case No.

Plaintiff,

Judge:

Magistrate Judge:

v.

LOWES COMPANIES, INC.

Defendant.

**NOTICE OF FILING REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

PLEASE TAKE NOTICE that, pursuant to 28 USC §1441, Defendant, improperly identified in Plaintiff's Initial Complaint as Lowes Companies, Inc., properly known as Lowe's Home Centers, LLC, [hereinafter "Lowe's"], hereby files with the Clerk of the Court a copy of its Notice of Removal, attached hereto, and which was filed with the United States District Court, Eastern District of Michigan, on September 8, 2022.

PLUNKETT COONEY

DATED: 9/8/22

/s/Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant Lowe's
111 East Court Street, Suite 1B
Flint, MI 48502
(810) 342-7010
rnimmo@plunkettcooney.com

CERTIFICATE OF ELECTRONIC FILING

Ridley S. Nimmo, II certifies that a copy of the Removal documents and this Certificate of Electronic Filing was electronically filed with the United States District Court, Eastern District of Michigan, in the above cause on 9/8/22. A copy will be provided to counsel of record via email at Liz@lawyer-liz.com and via electronic filing through MiFile, Oakland County Circuit Court's electronic filing system. I declare under the penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

/s/Ridley S. Nimmo, II
Ridley S. Nimmo, II (P54783)
Attorney for Defendant
111 E. Court Street, Suite 1B
Flint, MI 48502
810-342-7010
rnimmo@plunkettcooney.com

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ASHA COOK,

Case No.

Plaintiff,

Judge:

Magistrate Judge:

v.

LOWES COMPANIES, INC.

Defendant.

**NOTICE OF REMOVAL FOR CAUSE TO THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

NOW COMES Defendant, improperly identified in Plaintiff's Initial Complaint as Lowes Companies, Inc., properly known as Lowe's Home Centers, LLC, [hereinafter "Lowe's"], by and through its attorneys, Plunkett Cooney, pursuant to 28 U.S.C.A. §§ 1332, 1441 and 1446, hereby files this Notice of Removal of the above-captioned matter to the United States District Court for the Eastern District of Michigan, from the Oakland County Circuit Court where the action is now pending and states as follows:

1. The above-captioned matter was filed in Oakland County Circuit Court on or about July 28, 2022, and is now pending in that court.

2. Defendant Lowe's first received a copy of the Summons and Complaint and Jury Demand in this matter on or about August 10, 2022.

3. The above-captioned matter is a suit at common law of a civil nature brought by Plaintiff, Asha Cook, in which the Plaintiff seeks monetary damages as a result of Defendant Lowe's alleged negligence.

4. The above-captioned matter involves a controversy which is wholly between citizens of different states in that at the time of the commencement of this action in Oakland County Circuit Court, the Plaintiff was a citizen and resident of the County of Oakland, State of Michigan; the Defendant Lowe's, was, and still is, a foreign corporation under the laws of the State of North Carolina and its principal place of business in North Carolina (and Lowe's Home Centers, LLC is a manager-managed LLC with a single member, Lowe's Companies, Inc.; Lowe's Companies, Inc. is a North Carolina corporation with its principal place of business in North Carolina.).

5. This action is one over which the District Courts of the United States are given original jurisdiction.

6. The time within which Defendant Lowe's is required to file this Notice of Removal to Federal Court has not yet expired.

7. According to the allegations in Plaintiff's Complaint, Plaintiff seeks to recover monetary damages in connection with alleged injuries sustained as a result of Defendant Lowe's alleged negligence.

8. According to Plaintiff's Complaint, attached as Exhibit A, Plaintiff seeks to recover damages in excess of \$25,000, exclusive of interest and costs in this matter, for injuries Plaintiff alleges are serious, permanent and ongoing. Further, Plaintiff's counsel has advised that the amount in controversy exceeds \$75,000.00 in this case.

9. Defendant files with this Notice a copy of all process, pleadings and orders served upon Defendant in this action (See **Exhibit A**, including Plaintiff's Complaint, Jury Demand, Appearance, Answer, Affirmative Defenses on behalf of Defendant Lowe's, and Plaintiff's First Amended Complaint).

10. This action is removable to this Court under and by virtue of the acts of Congress of the United States.

12. Defendant Lowe's has served written notice of the filing of this Notice as required by 28 U.S.C.A. § 1446(d).

13. A copy of this Notice will be filed with the Clerk of the Oakland County Circuit Court, as required by 28 U.S.C.A. § 1446(d).

WHEREFORE, Defendant Lowe's respectfully requests that it may effectuate removal of this action from the Circuit Court for the County of Oakland, State of Michigan, to the United States District Court for the Eastern District of Michigan, and that this action proceed in this Court as an action properly removed.

Respectfully submitted,

PLUNKETT COONEY

Dated: 9/8/22

/s/Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court Street, Suite 1B
Flint, MI 48502
(810) 342-7010
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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ASHA COOK,

Case No.

Plaintiff,

Judge:

Magistrate Judge:

v.

LOWES COMPANIES, INC.

Defendant.

APPEARANCE

PLEASE ENTER my Appearance as attorney in the above-entitled matter for the Defendant, improperly identified in Plaintiff's Initial Complaint as Lowes Companies, Inc., properly known as Lowe's Home Centers, LLC.

Respectfully submitted,

PLUNKETT COONEY

Dated: 9/8/22

/s/Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant Lowe's
111 E. Court Street, Suite 1B
Flint, MI 48502
(810) 342-7010
rnimmo@plunkettcooney.com

CERTIFICATE OF ELECTRONIC FILING

Ridley S. Nimmo, II certifies that a copy of the Appearance and this Certificate of Electronic Filing was electronically filed with the United States District Court, Eastern District of Michigan, in the above cause on 9/8/22. A copy will be provided to counsel of record via email at Liz@lawyer-liz.com and via electronic filing through MiFile, Oakland County Circuit Court's electronic filing system. I declare under the penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

/s/Ridley S. Nimmo, II
Ridley S. Nimmo, II (P54783)
Attorney for Defendant
111 E. Court Street, Suite 1B
Flint, MI 48502
810-342-7010
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**Exhibit A –
Plaintiff's Complaint and Jury Demand,
Appearance for Defendant Lowe's, Answer to
Complaint, Affirmative Defenses by Defendant
Lowe's and Plaintiff's First Amended
Complaint**

This case has been designated as an eFiling case, for more information please visit
www.oakgov.com/efiling.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

vs.

2022-195319-NO

File No. 22- NO

HON.

JUDGE Nanci J. Grant

LOWES COMPANIES, INC

Defendant.

ELIZABETH A. HOHAUSER, PLLC
ELIZABETH A. HOHAUSER (P61038)
363 West Big Beaver Road, Suite 250
Troy, MI 48064
(248) 520-2054
Liz@lawyer-liz.com

COMPLAINT AND JURY DEMAND

*There is no other civil action between these parties arising out
of the same transaction or occurrence as alleged in this complaint
pending in this court, nor has any such action been previously dismissed
or transferred after having been assigned to a judge.*

Plaintiff, by and through her attorney, ELIZABETH A. HOHAUSER, PLLC, complaining of
Defendant, states unto this Honorable Court as follows:

JURISDICTION AND VENUE

- 1) At all relevant times, Plaintiff was a resident of the County of Oakland, State of Michigan.
- 2) At all relevant times, Defendant LOWES COMPANIES, INC was a North Carolina company
operating a home improvement store through its agents in the County of Oakland, State
of Michigan.
- 3) The casualty complained of herein occurred in the County of Oakland, State of Michigan.

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Elizabeth A. Hohauser (P61038)
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- 4) By reason of the premises, the amount in controversy exceeds Twenty-Five Thousand (\$25,000) Dollars.
- 5) Jurisdiction and venue are proper in this court by reason of the place of doing business of Defendant, the site of the incident, and the amount in controversy.

GENERAL ALLEGATIONS

- 6) Plaintiff incorporates by reference paragraphs 1 through 5 above as though fully restated herein.
- 7) At all relevant times, Defendant was the possessor in control of the premises located at 434 W. Twelve Mile Road Madison Heights, Michigan.
- 8) At all relevant times, Defendant operated a home improvement store, which was open to the public.
- 9) On July 11, 2022, Plaintiff was a patron of Defendant's store and as such was a business invitee on Defendant's premises.
- 10) On July 11, 2022, at the Lowes on Twelve Mile Road in Madison Heights Michigan, a cinderblock wall did fall onto Plaintiff's body causing serious and permanent injuries to Plaintiff's body, including but not limited to a comminuted displaced fracture of the mid diaphysis of the middle phalanx of her middle finger, which has required surgery and therapies and will require future surgeries and therapies.
- 11) At all relevant times, Plaintiff was free of comparative negligence.

COUNT I
NEGLIGENCE

- 12) Plaintiff incorporates by reference paragraphs 1 through 11 above as though fully restated herein.

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13) At all relevant times, Defendant owed Plaintiff duties of care including but not limited to the following:

- a. The duty to use reasonable care in the operation of its home improvement store;
- b. To act as a reasonably prudent business would in similar circumstances;
- c. To refrain from creating a dangerous condition on their premises;
- d. To inspect the premises for dangerous conditions;
- e. To warn customers of known dangerous conditions;
- f. To appropriately staff the store with employees;
- g. To train employees to act appropriately in similar circumstances;
- h. To properly supervise its employees in the exercise of their duties;
- i. To ensure that pallets of cement blocks in the store are properly displayed and maintained so that they do not fall on patrons.

14) Defendant did breach each and every duty owed to this Plaintiff.

15) As a direct and proximate result of the breaches of duty by Defendant, a wall of cinderblocks fell on Plaintiff, causing the injuries described below.

16) As a direct and proximate result of the breaches of duty owed by Defendant, Plaintiff sustained serious and permanent injuries, including, but not limited to the following:

- a. serious and permanent orthopedic, ligament, neurological, vascular and muscular injuries to Plaintiff's body, including, but not limited to a comminuted displaced fracture of the mid diaphysis of the middle phalanx of her middle finger, which has required medical intervention, surgery, and therapies and which will require additional surgeries as well as other related and appreciable difficulties, injuries, or consequences that have or may occur or develop;

- b. pain, suffering, mental anguish, fright, shock, denial of social pleasure and enjoyments, embarrassment, humiliation, mortification, disability, and/or emotional distress;
- c. aggravation and/or exacerbation of pre-existing condition(s);
- d. economic loss;
- e. other damages, injuries, and consequences that are found to be related to the accident that develop during the course of discovery.

WHEREFORE, Plaintiff prays that judgment enter in her favor and against Defendants in such amount in excess of Twenty-Five Thousand (\$25,000) Dollars as shall be determined upon the ultimate trial of this cause, together with interest, court costs and attorney fees.

COUNT II
PREMISES LIABILITY

17) Plaintiff incorporates by reference paragraphs 1 through 16 above as though fully restated herein.

18) At all relevant times, Defendant owed its invitees, and Plaintiff in particular, duties of care, including but not limited to the following:

- a. To make the premises safe;
- b. To inspect the premises for dangerous conditions;
- c. To exercise reasonable care and caution in the maintenance and repair of the premises;
- d. To refrain from creating an unreasonable and dangerous conditions on the premises;
- e. To make known dangerous condition safe;

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f. To warn, advise, and/or instruct invitees regarding dangerous conditions on the premises, which conditions were not open and obvious, but concealed and hidden, among other duties of care.

19) Defendant did breach each and every one of the duties owed to Plaintiff.

20) As a direct and proximate result of the breaches of duty owed by Defendant, Plaintiff sustained serious injuries as described above.

WHEREFORE, Plaintiff prays that judgment enter in her favor and against Defendant in such amount in excess of Twenty-Five Thousand (\$25,000) Dollars as shall be determined upon the ultimate trial of this cause, together with interest, court costs and attorney fees.

Respectfully submitted,

ELIZABETH A. HOHAUSER, PLLC

Dated: July 28, 2022

/s/ Elizabeth A. Hohauser

Elizabeth A. Hohauser (P61038)

363 W. big Beaver Rd #250

Troy, MI 48084

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ELIZABETH A.

HOHAUSER, PLLC

Elizabeth A. Hohauser (P61038)

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This case has been designated as an eFiling case, for more information please visit
www.oakgov.com/efiling.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

vs.

LOWES COMPANIES, INC

Defendant.

2022-195319-NO
File No. 22- NO
HON. JUDGE Nanci J. Grant

ELIZABETH A. HOHAUSER, PLLC
ELIZABETH A. HOHAUSER (P61038)
363 West Big Beaver Road, Suite 250
Troy, MI 48084
(248) 520-2054
Liz@lawyer-liz.com

DEMAND FOR TRIAL BY JURY

NOW COMES PLAINTIFF, ASHA COOK by and through her attorney, ELIZABETH A.
HOHAUSER, PLLC and hereby demands a trial by jury for the above referenced case.

ELIZABETH A. HOHAUSER, PLLC

Dated: July 27, 2022

/s/ Elizabeth A. Hohauser
Elizabeth A. Hohauser (P61038)
363 W. big Beaver Rd #250
Troy, MI 48084
(248) 520-2054
Liz@lawyer-liz.com

ELIZABETH A.
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

Case No. 2022-195319-NO

Hon. Nanci J. Grant

vs.

LOWES COMPANIES, INC.,

Defendant.

ELIZABETH A. HOHAUSER, PLLC
ELIZABETH A. HOHAUSER (P61038)
Attorneys for Plaintiff
363 West Big Beaver Road, Suite 250
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(248) 520-2054
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PLUNKETT COONEY
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court Street, Suite 1B
Flint, MI 48502
(810) 342-7010
rnimmo@plunkettcooney.com

APPEARANCE OF COUNSEL

PLEASE TAKE NOTICE and enter my Appearance as counsel on behalf of Defendant, improperly identified in Plaintiff's Complaint as LOWES COMPANIES, INC., properly known LOWE'S HOME CENTERS, LLC.

PLUNKETT COONEY

Dated: 9/6/22

By: /s/ Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court Street, Suite 1B
Flint, MI 48502
(810) 342-7010
rnimmo@plunkettcooney.com

PROOF OF SERVICE

CHRISTINE J. KNOTTS hereby certifies that on the 6th day of September, 2022, she caused to be served a copy of APPEARANCE OF COUNSEL and PROOF OF SERVICE via MiFile TrueFiling electronic filing with Oakland County Circuit Court, which will provide electronic notice of this filing to all counsel of record.

/s/ Christine J. Knotts
CHRISTINE J. KNOTTS

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

Case No. 2022-195319-NO

Hon. Nanci J. Grant

vs.

LOWES COMPANIES, INC.,

Defendant.

ELIZABETH A. HOHAUSER, PLLC
ELIZABETH A. HOHAUSER (P61038)
Attorneys for Plaintiff
363 West Big Beaver Road, Suite 250
Troy, MI 48084
(248) 520-2054
Liz@lawyer-liz.com

PLUNKETT COONEY
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court Street, Suite 1B
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**DEFENDANT'S ANSWER TO PLAINTIFF'S
COMPLAINT AND AFFIRMATIVE DEFENSES**

NOW COMES Defendant, improperly identified in Plaintiff's Complaint as LOWES COMPANIES, INC., properly known LOWE'S HOME CENTERS, LLC, by and through its attorneys, Plunkett Cooney, and for its Answer to Plaintiff's Complaint and Affirmative Defenses, states as follows:

JURISDICTION AND VENUE

1. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

2. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue. In further answering, Defendant notes that the proper party entity is Lowe's Home Centers, LLC.

3. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

4. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

5. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

GENERAL ALLEGATIONS

6. Defendant incorporates the above paragraphs as though more fully set forth therein.

7. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue. In further answering, Defendant notes that the proper party entity is Lowe's Home Centers, LLC.

8. In response to this paragraph, this Defendant admits only that the store in Madison Heights, Michigan is open to the public during its normal business hours.

9. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

10. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

11. In response to this paragraph, this Defendant presently lacks information or knowledge sufficient to form a belief as to the truth of these allegations and leaves Plaintiff to her strict proofs.

COUNT I
[ALLEGED] NEGLIGENCE

12. Defendant incorporates the above paragraphs as though more fully set forth therein.

13. In response to this paragraph, including subparagraphs (a) through (i), this Defendant objects to these allegations as they set forth conclusions of law and/or statements of duty to which no response is required in accordance with the Michigan Court Rules and law. To the extent a response is required, this Defendant does not believe that the statements contained therein set forth either completely and/or accurately the status of the law and, lastly, this Defendant affirmatively avers that any duty otherwise owing was complied with by this Defendant.

14. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue.

15. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue.

16. In response to this paragraph, including subparagraphs (a) through (e), this Defendant denies the allegations contained therein as said allegations are untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court to enter a Judgment of No Cause for Action in its favor, with costs and attorney's fees so wrongfully sustained, and such other relief in its favor as this Court deems just and proper.

COUNT II
[ALLEGED] PREMISES LIABILITY

17. Defendant incorporates the above paragraphs as though more fully set forth therein.

18. In response to this paragraph, including subparagraphs (a) through (f), this Defendant objects to these allegations as they set forth conclusions of law and/or statements of duty to which no response is required in accordance with the Michigan Court Rules and law. To the extent a response is required, this Defendant does not believe that the statements contained therein set forth either completely and/or accurately the status of the law and, lastly, this Defendant affirmatively avers that any duty otherwise owing was complied with by this Defendant.

19. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue.

20. In response to this paragraph, this Defendant denies the allegations contained therein as said allegations are untrue.

WHEREFORE, this Defendant respectfully requests this Honorable Court to enter a Judgment of No Cause for Action in its favor, with costs and attorney's fees so wrongfully sustained, and such other relief in its favor as this Court deems just and proper.

PLUNKETT COONEY

Date: 9/6/22

By: /s/ Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court St., Suite 1B
Flint, MI 48502
(810) 342-7010 (810) 232-3159 Fax
rnimmo@plunkettcooney.com

AFFIRMATIVE DEFENSES

NOW COMES, Defendant, improperly identified in Plaintiff's Complaint as LOWE'S COMPANIES, INC., properly known LOWE'S HOME CENTERS, LLC, by and through its attorneys, Plunkett Cooney, and to set forth its Affirmative Defenses, states as follows:

1. Defendant relies upon the open and obvious doctrine.
2. Defendant relies upon lack of notice.
3. Defendant relies upon the lack of proximate causation between the actions and/or inactions alleged and Plaintiff's alleged damages.
4. Plaintiff was comparatively negligent and that comparative negligence may be the sole proximate cause and/or a proximate cause of Plaintiff's alleged damages.
5. Defendant relies upon all defenses available to it consistent with the Tort Reform Legislation of 1996 including, but not necessarily limited to, the limitation of damages set forth in MCL 600.2959.
6. Defendant relies upon the intervening and superseding causation as it relates to the acts and/or conduct of others or outside forces, to the extent discovery reveals its applicability.

7. Defendant raises and preserves any objections regarding insufficiency of the process issued and/or service of process, to the extent discovery reveals its applicability.

8. Plaintiff's claims may be barred by waiver, estoppel and/or the statute of limitations and/or repose, to the extent discovery reveals its applicability.

9. Defendant relies upon Plaintiff's failure to mitigate damages, to the extent discovery reveals its applicability.

10. Defendant relies upon the collateral source rule, to the extent discovery reveals its applicability.

11. This Defendant reserves the right to name further affirmative defenses in accordance with the Michigan Court Rules as discovery makes them known and/or to withdraw affirmative defenses in accordance with the Michigan Court Rules if that becomes appropriate as discovery commences.

WHEREFORE, this Defendant respectfully requests this Honorable Court to enter a Judgment of No Cause for Action in its favor, with costs and attorney's fees so wrongfully sustained, and such other relief in its favor as this Court deems just and proper.

PLUNKETT COONEY

Date: 9/6/22

By: /s/ Ridley S. Nimmo, II
RIDLEY S. NIMMO, II (P54783)
Attorneys for Defendant
111 E. Court St., Suite 1B
Flint, MI 48502
(810) 342-7010 (810) 232-3159 Fax
rnimmo@plunkettcooney.com

PROOF OF SERVICE

CHRISTINE J. KNOTTS hereby certifies that on the 6th day of September, 2022, she caused to be served a copy of DEFENDANT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES and PROOF OF SERVICE via MiFile TrueFiling electronic filing with Oakland County Circuit Court, which will provide electronic notice of this filing to all counsel of record.

/s/ Christine J. Knotts
CHRISTINE J. KNOTTS

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FILED Received for Filing Oakland County Clerk 9/2/2022 3:59 PM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

vs.

LOWES HOMECENTERS, LLC

Defendant.

File No. 22-195319-NO

HON. Nanci J. Grant

ELIZABETH A. HOHAUSER, PLLC
ELIZABETH A. HOHAUSER (P61038)
363 West Big Beaver Road, Suite 250
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(248) 520-2054
Liz@lawyer-liz.com

/ pd/lm

AMENDED COMPLAINT AND RELIANCE ON JURY DEMAND.

Plaintiff, by and through her attorney, ELIZABETH A. HOHAUSER, PLLC, complaining of Defendant, states unto this Honorable Court as follows:

JURISDICTION AND VENUE

- 1) At all relevant times, Plaintiff was a resident of the County of Oakland, State of Michigan.
- 2) At all relevant times, Defendant LOWES HOMECENTERS, LLC was a foreign limited liability company operating home improvement stores through its agents throughout the County of Oakland and State of Michigan.
- 3) The casualty complained of herein occurred in the County of Oakland, State of Michigan.
- 4) By reason of the premises, the amount in controversy exceeds Twenty-Five Thousand (\$25,000) Dollars.

ELIZABETH A.
HOHAUSER, PLLC

Elizabeth A. Hohauser (P61038)

363 WEST BIG BEAVER
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- 5) Jurisdiction and venue are proper in this court by reason of the place of doing business of Defendant, the site of the incident, and the amount in controversy.

GENERAL ALLEGATIONS

- 6) Plaintiff incorporates by reference paragraphs 1 through 5 above as though fully restated herein.
- 7) At all relevant times, Defendant was the possessor in control of the premises located at 434 W. Twelve Mile Road Madison Heights, Michigan.
- 8) At all relevant times, Defendant operated a Lowes store, which was open to the public.
- 9) On July 11, 2022, Plaintiff was a patron of Defendant's store and as such was a business invitee on Defendant's premises.
- 10) Prior to Plaintiff's visit to Defendant's store on July 11, 2022, Defendant created a dangerous and hazardous condition in the display of its cinderblocks, which was not open or obvious.
- 11) Defendant knew, or in the exercise of reasonable diligence should have known, that the display of cinderblocks in its Lowes created an unreasonable risk of harm to its patrons.
- 12) Defendant knew, or in the exercise of reasonable diligence should have known, that a reasonably prudent person in Plaintiff's position would not and/or could not appreciate the danger posed by the cinderblock display.
- 13) At all relevant times, Defendant failed to warn its patrons of the potential danger posed by the cinderblock display.
- 14) At all relevant times, it was foreseeable that a patron may lift a cinderblock off the display pallet.

ELIZABETH A.
HOHAUSER, PLLC

Elizabeth A. Hohausier (P61038)
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15) On July 11, 2022, at the Lowes on Twelve Mile Road in Madison Heights Michigan, Plaintiff did lift a cinderblock from the display/pallet.

16) When she lifted the block, approximately 4 columns of cinderblocks did fall onto Plaintiff's body causing serious and permanent injuries to Plaintiff's body, including but not limited to a comminuted displaced fracture of the mid diaphysis of the middle phalanx of her middle finger, which has required surgery and therapies and will require future surgeries and therapies.

17) At all relevant times, Plaintiff was free of comparative negligence.

COUNT I
NEGLIGENCE

18) Plaintiff incorporates by reference paragraphs 1 through 17 above as though fully restated herein.

19) At all relevant times, Defendant owed Plaintiff duties of care including but not limited to the following:

- a. The duty to use reasonable care in the operation of its home improvement store;
- b. To act as a reasonably prudent business would in similar circumstances;
- c. To refrain from creating a dangerous condition that is not open and obvious on their premises;
- d. To inspect the premises for dangerous conditions;
- e. To warn customers of known dangerous conditions;
- f. To appropriately staff the store with employees;
- g. To train employees to act appropriately in similar circumstances;

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- h. To display cinderblocks in a way that is consistent with the practices of the industry;
- i. To properly supervise its employees in the exercise of their duties;
- j. To ensure that pallets of cement blocks in the store are properly displayed and maintained so that they do not fall on patrons.

20) Defendant did breach each and every duty owed to this Plaintiff.

21) As a direct and proximate result of the breaches of duty by Defendant, approximately 4 columns of cinderblocks fell on Plaintiff, causing the injuries described below.

22) As a direct and proximate result of the breaches of duty owed by Defendant, Plaintiff sustained serious and permanent injuries, including, but not limited to the following:

- a. serious and permanent orthopedic, ligament, neurological, vascular and muscular injuries to Plaintiff's body, including, but not limited to a comminuted displaced fracture of the mid diaphysis of the middle phalanx of her middle finger, which has required medical intervention, surgery, and therapies and which will require additional surgeries as well as other related and appreciable difficulties, injuries, or consequences that have or may occur or develop;
- b. pain, suffering, mental anguish, fright, shock, denial of social pleasure and enjoyments, embarrassment, humiliation, mortification, disability, and/or emotional distress;
- c. aggravation and/or exacerbation of pre-existing condition(s);
- d. economic loss;
- e. other damages, injuries, and consequences that are found to be related to the accident that develop during the course of discovery.

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WHEREFORE, Plaintiff prays that judgment enter in her favor and against Defendant in such amount in excess of Twenty-Five Thousand (\$25,000) Dollars as shall be determined upon the ultimate trial of this cause, together with interest, court costs and attorney fees.

COUNT II
PREMISES LIABILITY

23) Plaintiff incorporates by reference paragraphs 1 through 22 above as though fully restated herein.

24) At all relevant times, Defendant owed its invitees, and Plaintiff in particular, duties of care, including but not limited to the following:

- a. To make the premises safe;
- b. To inspect the premises for dangerous conditions;
- c. To exercise reasonable care and caution in the maintenance and repair of the premises;
- d. To refrain from creating a dangerous condition that is not open and obvious on their premises;
- e. To make known dangerous condition safe;
- f. To warn, advise, and/or instruct invitees regarding dangerous conditions on the premises, which conditions were not open and obvious, but concealed and hidden, among other duties of care.

25) Defendant did breach each and every one of the duties owed to Plaintiff.

26) As a direct and proximate result of the breaches of duty owed by Defendant, Plaintiff sustained serious injuries as described above.

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WHEREFORE, Plaintiff prays that judgment enter in her favor and against Defendant in such amount in excess of Twenty-Five Thousand (\$25,000) Dollars as shall be determined upon the ultimate trial of this cause, together with interest, court costs and attorney fees.

Respectfully submitted,

ELIZABETH A. HOHAUSER, PLLC

Dated: September 2, 2022

/s/ Elizabeth A. Hohauser

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASHA COOK,

Plaintiff,

vs.

LOWES HOMECENTERS, LLC

Defendant.

File No. 22-195319-NO

HON. Nanci J. Grant

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RELIANCE UPON DEMAND FOR TRIAL BY JURY

NOW COMES PLAINTIFF, ASHA COOK by and through her attorney, ELIZABETH A. HOHAUSER, PLLC and hereby relies upon the demand for a trial by jury that she previously filed in the above referenced case.

ELIZABETH A. HOHAUSER, PLLC

Dated: September 2, 2022

/s/ Elizabeth A. Hohauser

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